

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF)	Docket No. CWA-08-2002-40
)	
Bunker's Oil Company)	CONSENT AGREEMENT
211 La Delle Avenue)	
Dell Rapids, South Dakota 57022)	
)	
Respondent.)	
_____)	

STATUTORY AUTHORITY

This Consent Agreement is entered into between Complainant United States Environmental Protection Agency Region 8 ("EPA") and Bunker's Oil Company, ("Bunker's" or "Respondent") pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6)(B)(ii), which authorizes the EPA Administrator to issue civil penalties for violations of its implementing regulations. This authority has been properly delegated to the undersigned EPA officials. Complainant and Respondents (hereafter referred to collectively as "the Parties"), by their undersigned representatives, hereby consent and agree as follows.

FACTUAL AND PROCEDURAL BACKGROUND

1. On September 30, 2002, Complainant issued Respondent an Administrative Complaint and Notice of Opportunity for Hearing under Section 311(b)(6)(B)(i) of the Clean Water Act (the Act), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990 (herein, the "Complaint"), for alleged violations of the Act and related Spill Prevention, Control and Countermeasures requirements set forth at 40 C.F.R. Part 112 at Respondent's bulk fuel distribution facility located at 211 La Delle Avenue, Dell Rapids, South Dakota. The Complaint proposed a civil penalty for the violations alleged therein.

2. Respondent admits the jurisdictional allegations of the Complaint and the Consent Agreement.

3. Respondent neither admits nor denies the specific factual allegations of the Complaint and the Consent Agreement.

4. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.

5. This Consent Agreement contains all terms of the settlement agreed to by the Parties. Upon incorporation into a Final Order, this Consent Agreement applies to and is binding upon Complainant and Respondent, Respondent's officers, directors, employees, agents and all persons acting under or for Respondent, until such time as the civil penalty required under paragraph no. 8 has been paid and the compliance activities referenced in paragraph no. 13 are fully performed, and any delays in performance have been resolved. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

6. Pursuant to § 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA determined that an appropriate civil penalty to settle this action is in the amount of one thousand dollars (\$1,000) after considering the seriousness of the violations, the economic benefit to the violator, the degree of culpability, any other penalty for the same incident, any prior history, Respondent's efforts to mitigate the effects of a discharge, the economic impact of the penalty on the violator¹, Respondents' agreement to perform the compliance activities outlined herein, and any other matters as justice may require.

¹ Complainant in this matter lowered the proposed penalty amount to the agreed-upon settlement amount after reviewing Respondent's relevant financial information at Respondent's request and determining that Respondent had a legitimate inability to pay claim.

7. Respondent consents and agrees to pay the amount of One Thousand Dollars (\$1,000.00) and perform the compliance activities set forth in paragraph no. 13 herein to resolve all counts alleged in the Complaint.

TERMS OF SETTLEMENT

Civil Penalty

8. Respondent shall remit a cashier's or certified check in the amount of One Thousand Dollars (\$1,000.00) within thirty (30) days of the effective date of the Final Order made payable to "Oil Spill Liability Trust Fund" to:

Jane Nakad
Technical Enforcement Program (8ENF-T)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

Respondent shall write the docket number and name of the facility on the check.

9. Respondent agrees to mail a copy of the check simultaneously to the following:

Amy Swanson (8ENF-L)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

and to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

10. Respondent agrees that in the event that payment is not received by the date specified in paragraph 8 above, interest shall accrue from the due date at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment is received in full.

11. In addition, Respondent agrees to pay a handling charge of fifteen dollars (\$15.00) after the first 30 days that the payment, or any portion thereof, is overdue, and each subsequent thirty-day period that the penalty remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount not paid within 90 days after the date of the Final Order. Payments are first applied to accrued interest, penalty and/or handling charges; the balance is then applied to the outstanding principal amount.

12. Respondent agrees that the penalty paid under this Consent Agreement may not be claimed as a federal or other tax deduction or credit.

Compliance Activities

13. In addition to payment of the civil penalty referenced above, Respondents agree to perform the following activities within the timeframes specified to return to compliance with the CWA and its implementing SPCC regulations:

- a. No later than thirty (30) days from the effective date of this Consent Agreement, Respondent agrees to amend/update the facility's existing SPCC Plan by preparing a carefully thought-out SPCC Plan in accordance with good engineering practices and the applicable SPCC regulations set forth at 40 C.F.R. part 112 (June 21, 2001). The SPCC Plan shall be reviewed by a Registered Professional Engineer in accordance with 40 C.F.R. § 112.3(d). Respondent agrees to provide EPA with a copy of the final SPCC Plan within thirty (30) days of completion.

- b. No later than ninety (90) days from the effective date of this Consent Agreement, Respondent agrees to complete implementation/installation of all procedures, methods or equipment referenced in the SPCC plan including but not limited to those guidelines set forth in 40 C.F.R. § 112.7.

GENERAL PROVISIONS

14. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Act and its implementing regulations.

15. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

16. Nothing in this Consent Agreement shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted if Respondent fails to perform pursuant to the terms of this Consent Agreement.

17. Respondent's undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the party he or she represents to the terms and conditions of this Consent Agreement.

18. The Parties agree to bear their own costs and attorneys fees in connection with this matter.

19. The Parties agree to forward this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.

20. This Consent Agreement, upon incorporation into a Final Order by the Regional

Judicial Officer and upon full payment of the agreed-upon amount by the Respondent, shall constitute a complete and full civil settlement of the specific violations alleged in the Complaint.

SO CONSENTED AND AGREED TO BY:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION VIII
Complainant.

Date: 5/28/03 **SIGNED**
Elisabeth Evans, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 5/27/03 **David J. Janik**
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

BUNKER'S OIL COMPANY
Respondent.

Date: 5/12/03 **SIGNED**
Greg Kelff, Acting President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **BUNKERS OIL COMPANY, DOCKET NO.: CWA-08-2002-40** was filed with the Regional Hearing Clerk on June 2, 2003.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

Greg Reiff, Owner
Bunkers Oil Company
1203 Thresher Drive
Dell Rapids, SD 57022

Commander
Finance Center (OGR)
U.S. Coast Guard
1430 A Kristina Way
Chesapeake, VA 23326

and pouch mailed to:

The Honorable Carl Charneski
Office of Administrative Law Judges (1900L)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

June 2, 2003

SIGNED

Tina Artemis
Regional Hearing Clerk

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JUNE 2, 2003.